



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1998

Mr. Tracy A. Pounders
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR98-0511

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112884.

The City of Dallas (the "city") received a request for "all letters, memos, proposals, contracts and any other information related to site selection, acquisition and development for the proposed new sports arena and any land around it. This should include any documents related to discussions of ancillary development near the proposed arena." You state that much of the requested information has been ruled on in previous opinions from this office, including Open Records Letter Nos. 98-339 (1998), 97-2235 (1997), 97-1874 (1997), 97-145 (1997), 96-1826 (1996), 96-723 (1996), and 96-599 (1996). You state that the city is relying upon these previous rulings to withhold certain responsive information in this request that this office has already ruled upon. You explain that you seek a decision concerning responsive information here which was generated after October 28, 1997. You have submitted a representative sample of the information which was generated after October 28, 1998.¹ You assert that portions of this information, labeled Exhibits B through G, are excepted from required public disclosure based on sections 552.104, 552.105, 552.107(1), and 552.111 of the Government Code.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You first argue that Exhibit E is excepted from disclosure under section 552.104. Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. You indicate that Exhibit E contains information relating to the city's efforts to acquire financing for the proposed arena project. You claim that

[e]arly release of the information in Exhibit E will give a competitive advantage to financial institutions that have yet to submit proposals to the city for arena related financing, hampering the city's ability to maximize competition among proposers, potentially increasing its cost of acquiring arena related property rights.

After reviewing the submitted material and your arguments, we find that you may withhold Exhibit E under section 552.104 at this time.

You next argue that Exhibits B, C, and D may be withheld under section 552.105 of the Government Code. Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 (1990) at 2. For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position

in regard to particular transactions.” Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)).

When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, the attorney general in issuing a ruling under section 552.306 will accept that determination unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990). Upon review of the city’s arguments and the information contained in Exhibits B, C, and D, we agree that release of the information in these exhibits would damage the city’s negotiating position with respect to the purchase of the property. Accordingly, the information in Exhibits B, C, and D may be withheld from required public disclosure under section 552.105 of the Government Code.

You also raise section 552.107(1) for information contained in Exhibit F. Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). Section 552.107(1) does not protect purely factual information, including the factual recounting of events or the documentation of calls made, meetings attended, and memos sent, or information which reports communications made with a third party (conversations between attorney and opposing counsel). Open Records Decision No. 574 (1990) at 5. We agree that section 552.107(1) applies to portions of the information contained in Exhibit F. We have marked this information for your convenience. The remaining information in Exhibit F must be released to the requestor.²

Finally, you contend that Exhibit G may be withheld under section 552.111. Section 552.111 excepts “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material

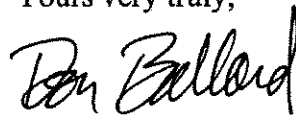
²Because we make a determination under section 552.107 for Exhibit F, we do not address your additional argument under section 552.111. We do not believe that section 552.111 affords any greater protection of the information in Exhibit F than we have already found under section 552.107.

reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Where a document is a genuine preliminary draft that has been released or is intended for release in final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter; release would reveal something of the deliberative process by indicating where additions and deletions were made. Therefore, the draft itself, including comments, underlining, deletions, and proofreading marks are excepted by section 552.111, but not purely factual matters that are severable.

Upon review of the information contained in Exhibit G, we conclude that it consists of draft documents related to the policymaking processes of the city, and therefore this information may be withheld from disclosure under section 552.111. While some of the other documents contained in Exhibit F appear to pertain to the policymaking functions of the city, it appears that some of the information contained in these documents is purely factual, or otherwise does not consist of advice, opinion or recommendation. We have marked those portions of the documents in Exhibit F that may be withheld from required public disclosure under section 552.111. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 112884

Enclosures: Submitted documents

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